

COJ

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

2:12-cv-03555-CDJ X

CHATOM PRIMARY CARE, P.C., on Behalf of  
Itself And All Others Similarly Situated,

Plaintiff,

v.

MERCK & CO., INC.

Defendant.

DR. ANDREW KLEIN, on Behalf of  
Himself And All Others Similarly Situated,

2:12-cv-03857-CDJ

File

Plaintiff,

v.

MERCK & CO., INC.

Defendant.

FILED

AUG -2 2012  
MICHAEL J. KUNZ, Clerk  
PAUL J. KUNZ, Dep. Clerk

CASE MANAGEMENT ORDER

WHEREAS, the above-captioned action *Chatom Primary Care, P.C. v. Merck & Co., Inc.*, No. 2:12-cv-03555, was filed on June 25, 2012 in this Court and was assigned to the undersigned;

WHEREAS, the above-captioned action *Dr. Andrew Klein v. Merck & Co., Inc.*, No. 2:12-cv-03857, was filed on July 9, 2012 in this Court and was assigned to the undersigned;

WHEREAS, these two actions (hereinafter "Related Actions") involve the same or similar subject matters;

WHEREAS, counsel for plaintiffs and the defendant Merck & Co., Inc. in these Related Actions have consented to the filing of a consolidated amended complaint before this Court (“Consolidated Action”);

WHEREAS, this Court is seeking to ensure that all claims are fairly, speedily, and cost-effectively resolved;

WHEREAS, in order to promote judicial economy and avoid duplication, the Court finds that it would be appropriate to provide procedures for coordination of the Consolidated Action and for an organization of plaintiffs’ counsel to coordinate the efforts of counsel in these actions;

IT IS HEREBY ORDERED as follows:

**I. CONSOLIDATION**

A. The following cases are consolidated for all purposes pursuant to Rule 42(a) of the Federal Rules of Civil Procedure: *Chatom Primary Care, P.C. v. Merck & Co., Inc.*, No. 2:12-cv-03555 and *Dr. Andrew Klein v. Merck & Co., Inc.*, No. 2:12-cv-03857.

B. The terms of the Order shall not have the effect of making any person, firm or corporation a party to any action in which he, she or it has not been named, served or added as such, in accordance with the Federal Rules of Civil Procedure. The terms of this Order and the consolidation ordered herein shall not constitute a waiver by any party of any claims in or defenses to the Consolidated Action.

**II. MASTER DOCKET, MASTER FILE AND SEPARATE ACTION DOCKETS**

A. A Master Docket and a Master File are hereby established for this and all related cases subsequently filed in or transferred to this Court. Entries in said Master Docket shall be applicable to this Consolidated Action as more fully set forth below. Separate dockets shall also be maintained for each related case currently pending, subsequently filed in or transferred to this

Court, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order or a future order of this Court.

B. When a pleading or other court paper is filed and the caption, pursuant to paragraph III.B, infra, shows that it is to be applicable to "All Actions," the Clerk shall file such pleading or other court paper in the Master File and note such filing in the Master Docket. No further copies need be filed nor docket entries made.

C. When a pleading or other court paper is filed and the caption, pursuant to paragraph III.B., infra, shows that it is applicable to fewer than all actions before this Court, the Clerk need only file such pleading or other court paper in the Master File, but nonetheless shall note such filing in both the Master Docket and in the docket of each such action.

### III. **CAPTION OF CASES**

A. Every pleading filed in this proceeding, or in any separate action included herein, shall bear the following caption:

IN RE: MERCK MUMPS	:	Master File No. 2:12-cv-03555
VACCINE ANTITRUST	:	
LITIGATION	:	
<hr/>		
THIS DOCUMENT RELATES TO:	:	
<hr/>		

B. When a pleading or other court paper is intended to be applicable to all actions, the words "All Actions" shall appear immediately after the words "THIS DOCUMENT RELATES TO:" in the caption set out above. When a pleading or other court paper is intended to be applicable only to one, but not all of such actions, the party filing the document shall indicate the action(s) to which the document is intended to be applicable by indicating the named plaintiff and the docket number(s).

**IV. NEWLY FILED OR TRANSFERRED ACTIONS**

A. When a case which relates to the subject matter of this Consolidated Action is hereafter filed in this Court or transferred here from another court, the Clerk of this Court shall:

1. Make an appropriate entry in the Master Docket;
2. Place a copy of this Order in the separate file for such action;
3. Mail a copy of this Order to the attorneys for the plaintiffs in the newly filed or transferred case and to the attorneys for any new defendants in the newly filed or transferred case; and
4. Send written notice to counsel for plaintiffs and to counsel for defendants in the Consolidated Action of the filed or transferred case.

B. This Court requests the assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case which might properly be consolidated or coordinated with this Consolidated Action.

C. This Order shall apply to each related case subsequently filed in this Court or transferred to this Court unless a party objecting to the coordination or consolidation of such case or to any other provision of this Order shall, within twenty-one (21) days after the date upon which a copy of this Order is mailed to counsel for such party, file an application for relief from this Order or any provision herein and this Court deems it appropriate to grant such application.

The parties subject to this Order will have twenty (20) days to respond to such application.

**V. CONSOLIDATED AMENDED COMPLAINT**

A. Plaintiffs and defendant agree that plaintiffs shall file a Consolidated Amended Complaint in the Consolidated Action no later than August 31, 2012.

B. The Consolidated Amendment Complaint shall supersede all other complaints, and be the operative complaint, in the Consolidated Action.

C. Within 30 days after the filing of plaintiffs' Consolidated Amended Complaint, defendant shall file a responsive pleading or otherwise move pursuant to Rule 12.

D. Within 30 days after the filing of any motion to dismiss by defendant, plaintiffs shall file an opposition.

E. Within 15 days after the filing of plaintiffs' opposition, defendant shall file leave for a reply brief, attaching the proposed reply brief thereto.

F. Defendant does not need to file a responsive pleading to the complaints filed or otherwise move pursuant to Rule 12 in the Consolidation Action until the filing of the Consolidated Amended Complaint.

## **VI. ORGANIZATION OF PLAINTIFFS' COUNSEL**

A. The court designates the following firms to act on behalf of all plaintiffs as Co-Lead Counsel with responsibilities hereinafter described:

LABATON SUCHAROW LLP  
140 Broadway, 34<sup>th</sup> Floor  
New York, NY 10005  
Tel: (212) 907-0700

SPECTOR, ROSEMAN, KODROFF & WILLIS, P.C.  
1818 Market Street, Suite 2500  
Philadelphia, PA 19103  
Tel: (215) 496-0300

B. Co-Lead Counsel shall have the authority and responsibility for the day-to-day management of the interests of the Class Plaintiffs in the litigation, and shall call meetings and otherwise manage the work among all counsel.

C. Co-Lead Counsel shall have sole authority over the following matters on behalf of Class Plaintiffs: (a) the initiation, response, scheduling, briefing and argument of all motions; (b) the scope, order and conduct of all discovery proceedings, including designating the counsel who will take any deposition on behalf of all plaintiffs and sending discovery requests on behalf of all plaintiffs; (d) the retention of experts; (e) designation of which attorneys may appear at hearings and conferences with the Court; (f) the timing and substance of any settlement negotiations with defendants; and (g) other matters concerning the prosecution or resolution of their respective cases. Co-Lead Counsel shall have responsibility for major decisions on behalf of plaintiffs' counsel regarding the overall prosecution of the Consolidated Action and shall be responsible for the establishment of any working committees for the efficient prosecution of the litigation and the appointment of chair persons and members of such committees.

D. No motion shall be initiated or filed on behalf of any Class Plaintiff except through Co-Lead Counsel.

E. Co-Lead Counsel shall have sole authority to communicate with defendant's counsel and the Court on behalf of all Class Plaintiffs, unless that authority is expressly delegated to other counsel. Defendant's counsel may rely on all agreements made with Co-Lead Counsel, and such agreements shall be binding on all other Class Plaintiffs' counsel in their respective cases.

## **VII. SERVICE OF DOCUMENTS**

A. Defendant shall effect service of papers on plaintiffs by serving a copy of the paper by overnight mail service, electronic mail, telecopy or hand delivery on each Co-Lead Counsel.

B. Plaintiffs shall effect service of papers on defendant by serving a copy of the paper by overnight mail service, e-mail, fax or hand delivery on counsel for defendant. This Court's Master Service List shall govern in all proceedings.

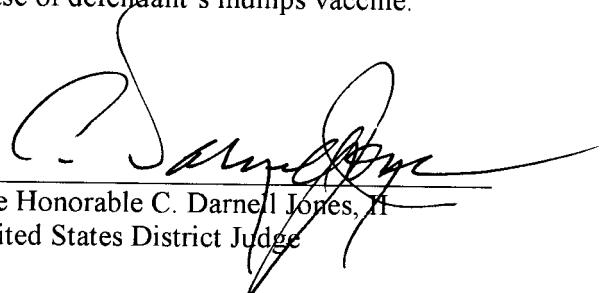
C. Defendant agrees to accept service of the complaints filed in the *Chatom Primary Care, P.C. v. Merck & Co., Inc.*, No. 2:12-cv-03555 and *Dr. Andrew Klein v. Merck & Co., Inc.*, No. 2:12-cv-03857 actions, and agrees to accept service of all future complaints consolidated under the within Case Management Order.

**VIII. APPLICATION TO OTHER ACTIONS**

A. In addition, this Order shall apply to any related actions filed in this Court, or transferred to this Court, raising antitrust, consumer protection, breach of warranty, or unjust enrichment claims or claims related to the direct purchase of defendant's mumps vaccine.

SO ORDERED.

Dated: Aug. 2, 2012, 2012.



The Honorable C. Darnell Jones, Jr.  
United States District Judge

ENTERED  
AUG 02 2012  
CLERK OF COURT  
8/2/2012  
A. Matthew-Daniel